

G. MARTINI (LTD.), PLAINTIFF AND APPELLANT, VS. J. M. GLAISERMAN, DEFENDANT AND APPELLEE.

G.R. No. 13699. November 12, 1918

Ponente: FISHER, J.

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FISHER, J.:

In September, 1915, plaintiff and defendant entered into a contract under the terms of which defendant agreed to enter the service of plaintiff for a period of three years. The contract does not specify the character of the services to be rendered by defendant to plaintiff. The agreement is that he will serve the plaintiff or his successors "exclusively for a period of three years and promises to carry out his employer's instructions to the best of his ability, and go wherever his employer's interests should require him to go * * *."

The second clause of the contract reads as follows:

"When the three years are over, the second party agrees that in case he should not find it convenient to renew the connection with the first party for another term, he shall not engage in any business either for himself or others similar to the business carried on by his present employer, or in which his employer may be engaged at that time, for 1 (one) year at least, or without first having secured the consent of the first party in writing, and in case of breach of this condition by him, he agrees to pay to the first party the sum of £400 (four hundred pounds sterling) as liquidated damages, to be recovered from him by the first party in any court having jurisdiction, and he thus waives any defense in law or in equity to any suit to recover said amount as liquidated damages, and likewise to any suit or proceeding to restrain himself, or to both such proceedings."

Defendant entered upon the performance of his contract and continued to serve the plaintiff until July 1, 1917, when he left plaintiff's employ, and shortly after entered the employ of the firm of Dyogi & Co. The reasons given by defendant in his testimony for his refusal to continue to work for the plaintiff corporation is that he was unable to endure the insulting treatment which he received at the hands of plaintiff's managing director. We are of the opinion in the light of the evidence on this branch of the case, including that of plaintiff's managing director himself, that defendant was fully justified in refusing to submit to the treatment to which he was subjected and in leaving the employ of the plaintiff corporation.

Ordinarily, when an employee leaves the service of the employer under such conditions, there can be no doubt that he would be relieved from all the consequences of the contract of employment, its breach being in effect imputable to the employer rather than to the employee. But in this instance we find that the probability of this contingency was foreseen and provided for in clause six of the contract of employment, which reads as follows:

"Should the first party or his representatives render the relation between the two parties difficult or disagreeable, the second party will have the right to tender his resignation, such resignation to become effective six (6) months after its filings or earlier, if the first party so desires, but in such case, conditions of section two (2) of this agreement will bind good."

It seems evident that defendant elected to resign under the terms of the option conferred upon him by this clause

and the fact of his resignation, under the circumstances which brought it about, is not in itself sufficient to relieve him from the duty of compliance with the terms of clause two of the contract, if that clause is valid.

In the case of *Ollendorff vs. Abrahamson* (38 Phil. Rep., 585), we said on the subject of contracts of this kind:

"In the nature of things, it is impossible to frame a general rule by which to determine in advance the precise point at which the right of freedom of contract must yield to the superior interest of the community in keeping trade and commerce free from unreasonable restrictions. Originally the English courts adopted the view that any agreement which imposed restrictions upon a man's right to exercise his trade or calling was void as against public policy. (Cyc, vol. 9, p. 525.) In the course of time this opinion was abandoned and the American and English courts adopted the doctrine that where the restraint was unlimited as to both time and space it was void, but that agreements limited as to time but unlimited as to space, or limited as to space but unlimited as to time were Valid. In recent years there has been a tendency on the part of the courts of England and America to discard these fixed rules and to decide each case according to its peculiar circumstances, and make the validity of the restraint depend upon its reasonableness. If the restraint is no greater than is reasonably necessary for the protection of the party in whose favor it is imposed it is upheld, but if it goes beyond this it is declared void. This is the principle followed in such cases by the Supreme Court of the United States. In the case of *Gibbs vs. Consolidated Gas Co. of Baltimore*, 130 U. S., 396, the Court said:

" 'The decision in *Mitchel vs. Reynolds* (IP. Wms., 181 [Smith's Leading Cases, Vol. 1, Pt. II., 508]) is the foundation of the rule in relation to the invalidity of contracts in restraint of trade; but as it was made under a condition of things, and a state of society, different from those which now prevail, the rule laid down is not regarded as inflexible, and has been considerably modified. Public welfare is first considered, and if it be not involved, and the restraint upon one party is not greater than protection to the other party requires, the contract may be sustained. The question is, whether, under the particular circumstances of the case and the nature of the particular contract involved in it, the contract is, or is not, unreasonable. (*Rousillon vs. Rousillon*, L. R. 14 Ch. Div., 351; *Leather Cloth Co. vs. Loursont*, L. R. 9 Eq., 345).'

"Following this opinion, we adopt the modern rule that the validity of restraints upon trade or employment is to be determined by the intrinsic reasonableness of the restriction in each case, rather than by any fixed rule, and that such restrictions may be upheld when not contrary to the public welfare and not greater than is necessary to afford a fair and reasonable protection to the party in whose favor it is imposed."

The question to be decided is, therefore, whether it can be said that the restraint which the contract here under consideration seeks to impose upon defendant, after he ceases to be an employee of plaintiff, is reasonably necessary for the protection of plaintiff's interests. It appears from the evidence that plaintiff is engaged in a great many branches of business, one of which is the purchase and exportation of abaca [hemp.] When defendant entered the employ of plaintiff he had had no previous experience whatever in the abaca business. While he was working for plaintiff, defendant was employed in the hemp department of plaintiff's business, but according to the testimony of plaintiff's managing director, he never acquired any appreciable proficiency and was not allowed to close any deals for the purchase of abaca without express approval of some other officer or employee of the company. It also appears that plaintiff was fully aware at the time defendant was employed by him that he had had no previous experience in the hemp business. Upon leaving the service of plaintiff and entering the service of *Dyogi & Co.*, the defendant was employed by the latter in connection with the purchase by it of abaca for exportation.

The evidence further discloses that the plaintiff corporation is engaged in the great many branches of commercial activity, the purchase and exportation of abaca being only one of its many enterprises. By the terms of the second clause of the contract of employment the prohibition laid upon defendant is not limited to any particular branch of plaintiff's business—it is not even limited to the particular branch or branches of that business in which he might be

employed. For a year after the cessation of his employment by defendant, whether such cessation be due to the expiration of the time for which the contract was made or because of defendant's availing himself of the privilege of resigning under clause six, because of the misconduct of his employer, he is forbidden to "engage in any business either for himself or others similar to the business carried on by his present employer, or in which his employer may be engaged at that time."

Can it be said that such a limitation upon the future activities of the employee was reasonably necessary to the protection of the employer? We think not. Under its express terms plaintiff, after treating defendant in such a way that his self-respect would compel him to resign under the sixth clause of the contract, is nevertheless empowered to prevent defendant, for a year, from engaging in any business similar to that of plaintiff, although defendant's experience in plaintiff's employ may have been limited to only one well-defined branch of its multifarious commercial activities. The scope of this prohibition is clearly shown by the testimony of plaintiff's witness Buck, who states that the plaintiff corporation is engaged in the business of "importing a great many different lines * * * and the export of Philippine products in general."

Plaintiff argues that as it is only seeking to enjoin defendant from engaging in the hemp business, which was the particular branch of plaintiff's business in connection with which he rendered his services, the generality of the prohibition is not to be regarded as an obstacle to its enforcement. But the contract is to be construed as it stands, not as it might have been written. The question is not whether a contract requiring defendant to refrain for a given time from engaging in the particular line of work in which he was employed by plaintiff would have been valid, but whether this particular contract, under which he is forbidden to engage in any business in which plaintiff was engaged during the term of his employment, can be upheld.

It is true that an illegal and void pact which is severable from the rest will not affect those parts of the contract which are lawful. Thus in this particular contract the agreement for the letting and hiring of services is valid and is not affected by the addition of an unlawful pact which is void as constituting an unreasonable restraint of trade. But the objectionable agreement is not in itself severable. The undertaking is a unit, although' it may affect many particular forms of activity. Thus, it has been held that a note given in part for money lent and in part of money lost to the payee in gaming is unenforceable in its entirety. (Reed vs. Reeves, 13 Bush [Ky.], 447.)

We are, therefore, of the opinion that the agreement contained in paragraph two of the contract of employment is void as constituting an unreasonable restraint of trade, and that the decision of the lower court should be and is hereby affirmed. No appearance having been made on behalf of appellee no costs will be allowed on this appeal. So ordered.

Torres, Johnson, Street, Malcolm, and Avanceña, JJ., concur.

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